

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION TO DETERMINE	)	
WHETHER AN ADEQUATE MEANS FOR	)	CASE NO. 90-290
DELIVERY OF GAS IS AVAILABLE TO	)	
BURKESVILLE GAS, INC.	)	

O R D E R

On May 28, 1991, Bill Nickens requested that the Commission reopen Case No. 90-290. The request is based on allegations that Burkesville Gas, Inc. ("Burkesville Gas"), operating a gas distribution utility previously called Ken-Gas of Kentucky, Inc. ("Ken-Gas"), is more than 90 days in default of a November 26, 1990 agreement; and further, that material changes have been made to contractual documents presented in Case No. 90-290 and previously entered into by the parties in that proceeding. Attached to Mr. Nickens' request was an unsigned copy of a revised agreement and a copy of the original November 26, 1990 agreement, entitled Pipeline Lease Agreement. Not included as an attachment is a copy of a second agreement entered into by Mr. Nickens and Burkesville Gas on November 26, 1990 which relates to past due transmission fees owed by Ken-Gas to Mr. Nickens for Ken-Gas's previous use of his pipeline.<sup>1</sup>

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<sup>1</sup> Transcript of Hearing dated November 28, 1990, Exhibit No. 8.

Case No. 90-290 was established to investigate the adequacy and reliability of gas supply to the Burkesville Gas system, at that time owned and operated by Ken-Gas. The issue arose due to certain allegations raised by Mr. Nickens regarding the unauthorized and illegal use of his pipeline by Ken-Gas. According to Mr. Nickens, Ken-Gas had failed to pay transportation costs for gas it had transported through his pipeline<sup>2</sup> in Cumberland County since 1989, which is when Ken-Gas began operations as a gas distribution utility.

During the review of Case No. 90-290, Consolidated Financial Resources became principal owner of the gas system (51 percent) through Commission approval on February 21, 1991 of the transfer and sale of Ken-Gas in Case No. 90-294.<sup>3</sup> The gas system is now called Burkesville Gas, Inc. with the previous owner, Ken Turner, maintaining 49 percent ownership.

In its April 3, 1991 Order, the Commission dismissed Case No. 90-290 based upon the submission of information which included both November 26, 1990 agreements. Each of these agreements had been signed by all parties involved in the dispute, the effect of which was to permit gas to be transported through Mr. Nickens'

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<sup>2</sup> Based upon information previously submitted by Ken-Gas, Mr. Nickens owns a 5-mile portion of the 21-mile transmission pipeline through which Ken-Gas's source of gas supply was provided. The Nickens' pipeline is directly connected to the system now owned by Burkesville Gas.

<sup>3</sup> Case No. 90-294, The Application of Burkesville Gas Company, Inc. for Approval of the Transfer and Sale of Ken-Gas of Kentucky, Inc., and for an Order Authorizing the Creation and Issuance of \$1,300,000 of Long-Term Instruments of Indebtedness.

pipeline. In these two agreements, Burkesville Gas agreed to make monthly payments to Mr. Nickens for the use of his pipeline (Pipeline Lease Agreement) and to pay a part of the amount owed to Mr. Nickens by Ken-Gas for its previous usage (second agreement).

While the Commission has approved the transfer of Ken-Gas to Burkesville Gas and authorized the creation and issuance up to \$1,300,000 in long-term bonds, as of the date of this Order, the bond issue has not been made. One effect of the delay in the bond issue is that Burkesville Gas has not implemented the payment schedules in either of the agreements.

Based upon the information available, the Commission finds that Case No. 90-290 should be reopened to determine whether Burkesville Gas's access to a supply of gas is threatened due to the allegations raised by Mr. Nickens and Burkesville Gas's delay in getting the \$1,300,000 in bonds issued.

The Commission further finds that Mr. Nickens is a necessary party to this investigation.

IT IS THEREFORE ORDERED that:

1. Within 10 days from the date of this Order, Burkesville Gas shall submit to the Commission the following information:

a. The amount of gas per day (Mcf/day) that has been delivered through Mr. Nickens' pipeline to Burkesville Gas since February 21, 1991.

b. The amount of money, if any, that Burkesville Gas has paid to Mr. Nickens, stating the date and reasons for the amount of payment.

c. The date of any meetings or conversations with Mr. Nickens since November 26, 1990 regarding the two agreements signed on that date, including a summary of the discussions that occurred.

d. Support for its allegations that Mr. Nickens may not be the sole owner of the pipeline, including the sources of information on which this allegation is based.

e. A description of the manner in which Burkesville Gas proposes to move its gas supply through Mr. Nickens' pipeline absent either of the November 26, 1990 agreements or other contract between Burkesville Gas and Mr. Nickens.

f. Status of the November 26, 1990 Agreement in which Burkesville Gas agreed to pay certain arrearages owed to Mr. Nickens by Ken-Gas.

g. Status of a contract between Burkesville Gas and Mr. Nickens regarding payment of 20 cents per Mcf for use of his pipeline.

h. The chronology of events that have transpired since February 21, 1991 regarding the \$1,300,000 bond issue, including an explanation why the bond issue has not been made and when the closing date will occur.

2. Mr. Nickens is hereby made a party to this proceeding.

3. Within 10 days from the date of this Order, Mr. Nickens shall submit to the Commission support for his allegations that Burkesville Gas is in default of both November 26, 1990 agreements, including a summary of what precipitated proposed revisions to the Pipeline Lease Agreement; and information which


demonstrates that Mr. Nickens is 100 percent owner of the pipeline herein described.

4. Burkesville Gas and Mr. Nickens shall appear on July 24, 1991 at 10 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, for the purpose of presenting evidence regarding the issues herein, and Burkesville Gas shall demonstrate that it has the ability to deliver gas to its customers.

Done at Frankfort, Kentucky, this 3rd day of July, 1991.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

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Commissioner

ATTEST:

  
Executive Director